

December 13, 2004

VIA HAND DELIVERY

Mr. George N. Dorn, Jr.
Executive Director
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

**Re: Universal Service Fund 2003
Case No. 1997-0239-C**

Dear Mr. Dorn:

Enclosed for filing please find the South Carolina Cable Television Association's Petition for Reconsideration of Order No. 2004-573 in the above-referenced docket. Please have someone in your office date-stamp and return the extra copies to our courier as proof of filing. If you have any questions, please contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

FRE/bds
Enclosures

cc/enc: All Counsel of Record
Ms. Nancy Horne (via email & U.S. Mail)

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2004 DEC 13 AM 11:30
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In Re:

**SOUTH CAROLINA CABLE
TELEVISION ASSOCIATION'S
PETITION FOR REHEARING
OR RECONSIDERATION OF
ORDER NO. 2004-573**

1. SCCTA intervened as a formal party of record in this docket.

3. On December 2, 2004, SCCTA received a copy of Order No. 2004-573.

RETURN DATE: Green card OK
SERVICE: EK

findings and conclusions. Each such finding or conclusion cited constitutes error and arbitrary and capricious action, and is clearly erroneous in view of the reliable, probative and substantive evidence on the whole record, in violation of Chapters 5 and 9 of Title 58, and Chapter 23 of Title 1 of the Code of Laws of South Carolina, and is an abuse of discretion. In addition, each error violates the Due Process and Equal Protection Clauses of the Fourteenth and Fifth Amendments to the Constitution of the United States, and violates S.C. Const. Arts. I §3 and IX, §1.

5. Under the Commission's USF Guidelines adopted in Order No. 2001-419, incumbent local exchange carriers are permitted to seek additional funding from the USF annually. SCCTA's appeal of Order No. 2001-419 which established the USF is pending in the South Carolina Supreme Court. SCCTA's appeal of Order No. 2003-215 which approved an increase of approximately \$6.6 million in the USF is pending in the Circuit Court for Richland County. The Commission has not yet issued an order on SCCTA's petition for reconsideration of Order No. 2004-452 which approved an increase of approximately \$4.2 million in the USF.

5. Because Order No. 2004-573 suffers from the same errors as previous orders in this docket, SCCTA incorporates by reference in this petition the issues on appeal in Order Nos. 2001-419 and 2003-215 and the related orders granting requests for additional funds from the USF. Following is a brief summary of the errors in Order No. 2001-419.

- a. The USF violates the requirements of Section 58-9-280(E)(4) because it does not establish the size of the USF and because it does not engage in the calculation required by the statute.

- b. The USF established in Order No. 2001-419 is a barrier to entry prohibited by Section 253 of the Federal Telecommunications Act of 1996 as well as S.C. Code Section 58-9-280(E).
- c. The fund is oversized because the Commission's calculation method mismatches costs and revenues in violation of Section 58-9-280(E).
- d. Order 2001-419 conflicts with federal law in that it contravenes the Federal Telecommunications Act of 1996 by assessing contributions to the state USF on interstate revenues.
- e. The USF is discriminatory in the manner in which companies that qualify as carriers of last resort may be allowed to receive funds from the USF.

In addition to the above grounds following is a brief summary of additional errors in Order No. 2004-573:

- f. The Commission has not established a mechanism pursuant to Section 58-9-280(E)(4) for adjusting any inaccuracies in the estimate to establish the size of the fund.
- g. The Commission erroneously permitted the petitioners to reduce carrier common line charge and intrastate local switching charges and to recover those reductions from the USF which is impermissible under S.C. Code Section 58-9-280(C)(5) & (E). Basic local exchange service is the only service expressly supported by the USF.
- h. The Commission failed to require the petitioners to provide relevant evidence of how the cost estimates of the services under analysis relate to the cost of providing any other service offered by the carrier.
- i. The Commission erroneously relied on the petitioners' own statements concerning the economic effects of rate decreases in violation of Section 58-9-280(E).
- j. The Commission violated the Due Process Clause of the Fourteenth and Fifth Amendments of the U.S. Constitution, S.C. Constitution Art. I, § 3 and IX, § 1, and unlawfully delegated the power to regulate to the petitioners in violation of S.C. Code Sections 58-3-140 and 58-9-280(E)(4).

The errors described in subparts (a) through (j) are included in Order No. 2004-573 and the SCCTA asks this Commission to reconsider its previous rulings.

6. In the current Order the Commission found that the amount of funding requested by Sprint when combined with funding received from the first phase of the USF does not exceed 1/3 of the company-specific USF for Sprint. These findings are not supported by the evidence in this record. Since the Commission has made no determination of the total size of the USF, it cannot determine whether Sprint has exceeded 1/3 of its company specific total. Therefore, the Commission's Order violates S.C. Code Section 58-9-280(E)(4).

7. There is a fundamental flaw in the Guidelines used by the Commission to implement the phase-in USF plan. Under the phase-in plan the USF is funded in stages so that ILECs would continue to receive subsidies from implicit sources in its rates as well as the explicit funding from the USF. As evidenced by the record in this case the Guidelines provide no mechanism to determine how much implicit support is generated through the ILECs' rates. Without that information the Commission cannot accurately measure whether the ILECs are receiving the appropriate level of funding. The Order is arbitrary and capricious in holding that companies should not be required to identify the amount of implicit support in each service.


8. The Order violates the Federal Telecom Act, 47 USC. Sections 254(F) and (k), in that the Guidelines do not provide sufficient information for the Commission to prevent discrimination and cross subsidization. Since the Guidelines do not require any monitoring by the Commission of the levels of implicit support generated by various services, different services provide different levels of implicit support. If the rates charged to affiliates generate little or no implicit support in comparison to other rates then the USF is being used discriminatorily in violation of the Federal Telecom Act.

9. The Order violates S.C. Code Section 58-9-280(E)(6) in that the Guidelines do not include sufficient regulatory safeguards with respect to the submission of updated cost studies..

For the reasons stated herein we request that the Commission reconsider its rulings in Order No. 2004-573 and issue an order consistent with the grounds stated in this petition.

Dated this 13th day of December, 2004.

ROBINSON, McFADDEN & MOORE P.C.

By: 
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Attorneys for South Carolina Cable Television
Association

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 1997-0239-C

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DOCKETED
CLERK OF COURT

In Re:)
)
Proceeding to Establish Guidelines)
for an Intrastate Universal Service) **CERTIFICATE OF SERVICE**
Fund)
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This is to certify that I am a legal assistant in the firm of Robinson, McFadden & Moore, P.C., that I have this day caused to be served upon the persons named below the **Petition for Rehearing or Reconsideration of Order No. 2004-573** in the above captioned matter by placing a copy of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

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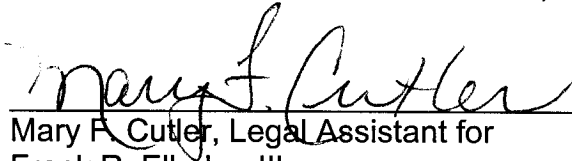
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A handwritten signature in cursive script, appearing to read "Mary F. Cutler", is written over a horizontal line.

Mary F. Cutler, Legal Assistant for
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December 13, 2004